



WALES by Ann Sherlock

Sherlock, A. (2012). Wales. In C. L. Glenn & J. De Groof (Eds.), *Balancing freedom, autonomy and accountability in education: Volume 4* (259-274). Tilburg, NL: Wolf Legal Publishers.

Overview and background

That Wales appears as a 'country' in this volume for the first time is indicative of the major changes that have taken place in the past decade in the status and governance of Wales. The Government of Wales Act 1998 provided for a limited form of devolved power to Wales and the establishment of a National Assembly for Wales. The devolution of powers and creation of Welsh political institutions were further enhanced by legislation in 2006 which has, gradually, increased the capacity for making Welsh law and policy that is different to that of England. However, the development of distinctively Welsh aspects of education law and policy had in fact begun some time before the devolution legislation of the late 20th century.

As one of the historic nations making up the United Kingdom, the legal position of Wales has been as part of the single 'England and Wales' legislative jurisdiction and until recently treatment of education law and policy in Wales had been dominated by consideration of developments in England. Yet, education law and policy was an area in which there had been some recognition of the different circumstances of Wales as a unit even before the 1998 devolution statute. Notwithstanding the enactment of legislation by the UK Parliament for application to England and Wales, distinctively

Welsh policies, approaches and institutions had been created in relation to the curriculum, inspection, bilingualism and to some extent assessment regimes (Phillips and Harper-Jones, 2002; Phillips and Sanders, 2000). Indeed, the increased use of secondary legislation to implement policy set by primary legislation allowed some flexibility for adjustments if only in relation to the administration of centrally-set policies.

From 1970, executive powers over education formally became the responsibility of the Secretary of State for Wales rather than the Education Secretary. While both are positions in the UK Central Government, and while separate education policy for Wales was definitely not being made by the Secretary of State for Wales, that office has been described as providing, in the Welsh Office (a department of the UK Government, but based in Wales), a focal point for interest groups to attempt to have an input into the development of how policies might apply in Wales (Phillips, 2003). However, it would not be wise to exaggerate the level of differentiation: as Daugherty et al (2000) note, while there have been differences, the policy agenda was being driven by central UK Government, with certain aspects being moderated or modified for Wales.

Of the values that are very evident in the debate on education policy in Wales, some are highly relevant to the focus of this volume on diversity and choice in education. As part of the England and Wales unit, politicians and the public in Wales had shown much less appetite for the market-driven approaches begun by the Conservatives in the 1980s and early 1990s and continued by subsequent UK governments. In England, parental choice and diversity was closely bound up with creating a market place in which parents, supplied with information about schools' performances, would act as consumers and choose the best-performing schools, thus creating competition and rewards for the successful. Such a policy has been less popular within Wales both for political reasons, with a more traditional bias towards the left, and for the practical reason that it is simply not a practical option outside major centers of population where there are few schools to choose between in reality. Phillips and Harper-Jones (2002, p302) draw an important contrast between the English White Paper published in 2001 and the parallel 'paving' document in Wales, *The Learning Country*. While the English White Paper expressed its commitment to creating greater diversity in schools and increased faith schools, *The Learning Country* indicated its commitment to the comprehensive ideal and local schools based on partnership. It was clear from the outset that there was a desire on the part of Welsh politicians to avoid the market-driven competition which has been encouraged in fields such as health as well as education in England. To some extent, examining the approach of Wales to issues concerning choice and diversity involves as much looking at the policy developments in England that Wales has chosen *not* to follow as looking at positive initiatives taken in Wales.

The other policy choice evident in the administrations in Wales since devolution has been a very strong commitment to the UN Convention on the Rights of the Child as the benchmark for the development of all policy affecting children in Wales. A recent law enacted by the Assembly in 2011 requires that Ministers must pay due regard to

the terms of that Convention when they are exercising any of their powers or duties. It remains to be seen to what extent, and how quickly, this will lead to greater account being taken of the wishes of the child when choices are available in the education system. While this will not increase or reduce the amount of choice available vis-à-vis the state, it could change the dynamic of respecting that choice, for, traditionally and still the case, the 'consumer' for the purposes of education law in England and Wales has been the parent rather than the pupil, and the law has, almost exclusively, worked on the assumption that the interests of the child always coincide with those of the parent.

The structure of schooling

The vast majority of schools in Wales are in the state sector. At both primary and secondary level they may be divided into four main categories: community schools, voluntary controlled schools, voluntary aided schools and foundation schools. The differences between these categories relate to the extent to which they are controlled by the local education authority (LEA). The categories, while re-named and modified by subsequent legislation, hark back to the Education Act of 1944. That Act was responsible for creating free and compulsory schooling for children from five to 15, subsequently raised to 16.

The 1944 Act created a division between schools based on selection on academic ability: students who passed an examination at the age of 11 proceeded to grammar schools and other students went to secondary modern schools. The Labor Government of the 1960s encouraged the demise of the selective system and a move to a comprehensive system. Historians of education in Wales have written about the practical difficulties experienced in implementing such a bipartite scheme in a small country especially in areas of relatively sparse population, and the extent to which some early attempts in Wales at what would now be termed comprehensive schooling had been rejected by central government (Jones, 1997, p51). It is not surprising, therefore that the move to the comprehensive system was accomplished quickly in Wales.

In creating a state education system, the 1944 Education Act accommodated existing religious denominational schools by allowing them to choose whether to come within the state sector: Harris (2007, p93) has described the equal place of denominational schools within the state system under the 1944 Act as 'one of its most significant features'. These denominational schools could become 'voluntary controlled' or 'voluntary aided' or 'special agreement schools', the difference between them relating to the degree of financial support and degree of autonomy from the LEA. The categories were renamed (and the special agreement category abolished) under the School Standards and Framework Act 1998 but the basic principle remains the same. Community schools (previously county schools) are those wholly owned and maintained by the LEA and do not have a religious character. A voluntary controlled school is wholly funded by the LEA which is then responsible for school admissions but the school may have a religious character which is protected; a voluntary aided school, again with a religious character, receives its operational funding from the LEA but has to meet a percentage, currently 10%, of the

capital costs itself. The admissions authority in a voluntary aided school is the school's governing body on which the school's founders or their successors have a majority of the membership. There are also differences in relation to the level of control over the curriculum which are set out below. The final category, foundation schools, was a new category created in 1998 and the background to their creation requires some explanation.

Under the Education Reform Act 1988 (under a Conservative Government) schools were given the option of receiving grant-maintained (GM) status. This meant that they remained in the state sector but were funded directly by central Government and no longer came under LEA control but were subject to the authority of the Secretary of State. Despite there being financial advantages for doing so, only a very small proportion of Welsh schools opted out of local authority control when they were offered this opportunity. In 1998-99, the final year when GM status was available, the statistics in Wales show that only six out of 1660 primary schools, and 12 out of 229 secondary schools opted for this status (StatsWales, table 007503). The Schools Standards and Framework Act 1998 (under a Labor Government) abolished GM status and provided for such schools to return to LEA control: GM schools were placed in the newly created category of foundation schools unless they had previously been voluntary schools, in which case they returned to that category. Foundation schools are maintained by the LEAs but their staff are employed by the school's governing body which also acts as the admissions authority. The Welsh Government has opposed the creation of any further foundation schools on the basis that their autonomy in administering their own admissions makes it difficult for the LEA to plan the provision of school places on a strategic basis. The Education (Wales) Measure passed in 2011 prohibits the creation of any new foundation schools although existing foundation schools remain in existence. This preference for local authority control, rather than school autonomy, is in marked contrast to developments in England where, at the same time, all state schools were being offered the opportunity to leave local authority control.

For children with special educational needs which make it impossible for them to participate in mainstream schools, there are special schools which may fall into the categories of community, voluntary aided or controlled or foundation schools. The presumption in the current legislation and associated guidance is, however, in favor of mainstream education wherever possible.

The distribution of categories of schools within the state sector is illustrated by the statistics for the year 2009-10: of all primary schools, 1221 were community schools, 142 were voluntary aided, 95 were voluntary controlled, and four were foundation schools; of all secondary schools, 194 were community schools, 19 were voluntary aided, two were voluntary controlled, and eight were foundation schools (StatsWales, table 007516).

The other categorization of schools in Wales relates to the language of instruction—English or Welsh. Some Welsh-medium schools provide all instruction through the Welsh language; other bilingual schools will provide some subjects through the medium of Welsh or a school may have a Welsh-medium 'stream' alongside an English-language 'stream'. In all schools, pupils will study Welsh as either a first or a second language (WAG, 2010).

The vast majority of schools within Wales are within the state sector as described above. The private, or 'independent sector' has traditionally been very small in Wales. The number of independent schools in Wales increased from 54 in 1998/99 to 64 in 2009/10. However the percentage of pupils in independent schools has remained fairly constant, rising from 1.9% to 2% in 2002/03 but remaining at that level until the last count in 2010. These are schools which are outside the state sector and do not receive state funding, although there are tax advantages for those with charitable status.

The legal framework of education

As part of the UK, which does not have a written constitution, there is no constitutional provision as such for schooling in Wales. The European Convention on Human Rights (ECHR) operates as a very general constraint for the activities of the UK in that it protects the right to education and requires the protection of other rights which may be relevant in the delivery of education such as privacy and freedom of religion and expression. However, as regards the *provision* of education, the requirements of Article 2 of Protocol No 1 to the ECHR are fairly basic: the European Court of Human Rights has ruled that the requirement that 'no one shall be denied the right to education' guarantees only 'a right of access to education institutions existing at a given time' (*Belgian Linguistic case No.2*). The provision also enshrines the requirement to respect the religious and philosophical convictions of parents in the education of their children, an obligation accepted by the UK 'only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.' While compliance with the rights in the ECHR is not binding, domestically, on the UK Parliament, it is a requirement for the National Assembly for Wales, and any Act of the Assembly incompatible with the rights guaranteed in the ECHR would be invalid.

As explained earlier, Wales has until very recently been part of the 'England and Wales' unit for which education law and policy has been made by the UK Parliament and Government, with that law and policy being administered at the local level by local authorities. Modern education law for England and Wales may be traced back to the Education Act 1944 although that Act has been amended and replaced by later legislation. Secondary legislation to fill in the details of much of the primary legislation was made by UK Government ministers, with the Secretary of State for Wales having responsibility for adopting such instruments for Wales. In reality, the Welsh secondary legislation was very often identical to the English version or modified only marginally.

Under the very limited form of devolution provided for Wales under the Government of Wales Act 1998, primary legislative powers were not granted to the newly created National Assembly for Wales which instead took over functions previously exercised by the Secretary of State for Wales. However, given that UK Acts of Parliament may grant very substantial powers to be exercised through secondary legislation, the actual extent of the powers exercisable by the Assembly depended on the drafting of particular Acts of Parliament, and education was a field where the UK Government

was willing to grant wide-ranging powers. However, the Assembly was dependent on the existence of powers in primary UK legislation and it had very little influence on the UK legislative process in order to secure powers if they did not already exist. The Government of Wales Act 2006 provided an enhancement of the ability to secure greater powers. Until 2011, under Part 3 of the Act, powers to make primary legislation could be granted on a case by case basis to the Assembly if agreed by the UK Government and Parliament. This cumbersome process expired in May 2011 and was replaced by an *en bloc* grant of powers, including those on education, to the Assembly under Part 4 of the 2006 Act.

Accordingly, determining the law applicable to Wales in relation to education requires scrutiny of UK Parliament legislation to the extent to which it applies to Wales or, possibly, has been amended by the National Assembly for Wales, 'Measures' made by the National Assembly for Wales in the period between 2007 and 2011, and 'Acts' of the National Assembly from 2011 onwards. There is also a considerable body of secondary legislation, made either by the Secretary of State for Wales or the relevant Welsh Minister under the authority of UK legislation or by the relevant Welsh minister under Measures or Acts of the National Assembly for Wales.

The volume of separate legislation for Wales is still relatively small. The Education (Wales) Measure 2009 extended to children with special education needs the appeal rights relating to assessment and provision that were previously enjoyed only by parents. It also provided for changes to the curriculum in relation to the initial years of primary education. The Education (Wales) Measure 2011 set out arrangements to encourage collaboration between schools and abolished the right of schools to become foundation schools. There has also been legislation on transport to school. However, in the context of the themes of autonomy and diversity, some of the most significant initiatives in Wales have been decisions *not* to follow some of the new approaches in England, such as the Assembly's lack of enthusiasm for the agenda of specialist schools or for allowing schools to opt out of local authority control.

Freedom to establish non-state schools

Parents' duties to ensure that their children receive an 'efficient full-time education' may be met by the children's attendance at schools outside the state sector. Such schools are referred to as 'independent schools.' The Education Act 2002 provides the legislative framework for the establishment of, and monitoring of standards in, independent schools in Wales. It is a requirement that independent schools are registered and it is an offence to run a school which is not registered. As long as they satisfy the required standards any individual or organization may apply to register a new independent school. A school will be inspected before registration and will then be subject to regular inspection thereafter to ensure that it achieves the required standards in relation to the quality of education provided, the welfare, health and safety of pupils, the suitability of the proprietors and staff, and the standard of the premises. More detail is set out in secondary legislation. As discussed above, this sector is relatively small in Wales.

Homeschooling

While education is compulsory for five- to 16-year olds, the law has never required that such education be received in schools. Parents have the duty of ensuring that their child receives 'efficient full-time education' which is suitable to the child's age, ability, aptitude and to any special educational needs he or she may have. This education may be provided 'either by regular attendance at school or otherwise.' The 'otherwise' allows parents to opt to educate their children at home as long as they provide 'suitable education'. There is no legal definition of 'full-time' and parents are not obliged to follow the national curriculum or to be in possession of any teaching qualifications. The parents' reasons for opting for home schooling are not relevant.

Where children are being removed from a school in order to receive home education, parents must comply with certain registration requirements; otherwise it can be difficult for LEAs to keep track of pupils who are being educated at home, especially if they have never attended a maintained school. Statistics released in 2011 indicated that there were 747 pupils being educated at home in 2009/10 in Wales (WAG, 2011).

There is no duty on the LEA to conduct routine inspections of home education, and indeed parents are not obliged to respond to informal enquiries made by the LEA. However, if it appears to the LEA that the child is not receiving suitable education, the LEA is obliged to serve a notice on the parents requiring them to satisfy the LEA that the child is indeed receiving such education. If there is a failure to satisfy the LEA in this respect, the LEA is required to serve a 'school attendance order' which requires the parents to register the child at a named school.

The Guidance issued by the Welsh Assembly Government indicates that there is considerable flexibility in terms of the method of delivery of home education and the content of such education. LEAs may offer advice and suggestions but may not specify a curriculum to be followed. In certain circumstances, if a number of pupils are being educated by parents outside their home, they might come within the definition of an independent school and in such case would have to register as such and would come under the legal framework for such schools.

School choice not limited by family income

The Education Act 1944 made education both compulsory and free. It also required the central Government and LEAs to have regard to the 'general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents'. Harris observes that the 'core purpose' of this right to parental choice appears to have been religious freedom (Harris, 2007, pp238-239). This general duty is currently embodied in the Education Act 1996. The School Standards and Framework Act 1998, dealing with school admissions, sets out the more specific statutory right of parents

to express a preference for a particular school, and to appeal against a school admission decision.

Accordingly, parents are able, regardless of family income, to choose among the maintained schools in their area. This provides a choice, in principle, between religious denominational and non-denominational schools and a choice as to Welsh- or English-medium instruction.

However, it must be noted that all the schools with a religious designation in Wales are either broadly Christian or belong to one of the Christian denominations. Parents who wish to send their child to a religious school which is other than Christian will be obliged to go outside the state sector and therefore incur fees, unless their child receives a scholarship or bursary from a particular school. In contrast to England, recent governments in Wales have shown no desire to increase the number of faith schools in Wales.

For those parents who are happy to remain within the state sector, there may be practical constraints. In reality in Wales, outside the major towns and cities, sparse population will often mean that choice is limited in practice in the range of types of school available. Where there is a choice of schools in an area, if a school is over-subscribed with applications then the criteria set out by the admissions authority will be applied and parents may not succeed in obtaining their first choice of school.

Particularly in sparsely populated rural areas, home to school transport is a cost which could in practice limit family choice of school if no provision were made. The Learner Travel (Wales) Measure 2008 sets out the duty of local authorities to provide for home to school transport for pupils in line with certain criteria. Essentially the duty applies where the child lives more than a specified distance from his or her school (2 miles for primary pupils and 3 miles for secondary pupils) unless the local authority has arranged for the child to become registered at a 'suitable' maintained school which is nearer the child's residence. Local authorities also have discretion to make travel arrangements beyond this duty.

Unlike the equivalent English legislation, the Welsh Measure does not impose a statutory duty on local authorities to have regard to parents' wishes for their children to be educated at a school with a religious character when the authority is assessing the travel needs of pupils. When the 2008 Measure was being adopted by the Assembly, attempts to amend the Measure to include such a duty were rejected. The non-statutory guidance states that the Welsh Government 'wants local authorities to continue to use their discretionary powers to make transport arrangements which take account of parental preferences for schools with a religious character.' Those who had argued for a requirement to this effect in the legislation had observed that, while many local authorities did fund travel to denominational schools that were not the closest school to the child's home, this was not universally the case (Assembly Record, 30 September 2008). The non-statutory guidance issued by the Welsh Government noted that if there were changes in local travel arrangements that had an adverse impact on choice the Welsh Ministers would consider making further provision.

As regards parental preferences to send a child to a Welsh-medium school, again there were attempts to write in a requirement to fund travel to a Welsh-medium school even if that were not the closest school. The Measure sets out a duty on local authorities and the Welsh Government to 'promote access to education and training through the medium of the Welsh language when exercising functions under the Measure.' This falls short of a statutory obligation to fund such travel. The Welsh Government considered it inappropriate to legislate further on this given that the 'varied patterns in the provision of Welsh medium education' meant that a uniform requirement would not suit all areas. However, it indicated that it would consider setting new requirements if practice were to result in arrangements which led to a decrease in access to Welsh-medium schools (WAG, 2009).

School distinctiveness protected by law and policy

Distinctiveness

Within the state sector in Wales, there are both religious denominational and non-denominational schools, and education may be provided in Welsh-medium or English-medium schools. However, there are constraints regarding the curriculum within which all these types of schools must operate.

The Education Act 2002 requires that all maintained schools in Wales must provide a 'basic curriculum' which includes the provision of religious education, personal and social education, work-related education, sex education for secondary school pupils, as well as a curriculum of certain subjects known as 'the National Curriculum for Wales' (mathematics, English, Welsh, science, design and technology, information and communication technology, physical education, history, geography, art and design, music and a modern foreign language).

Independent schools, i.e. those outside the state sector, are not bound by the requirements of the basic curriculum or the National Curriculum for Wales. Instead, under the 2002 Act, they are subjected to more general standards regarding the quality of education provided and the 'spiritual, moral, social and cultural development of their pupils.' An independent school failing to achieve these standards will be refused registration or could be removed from the register. However, the standards are phrased in more general terms than the curriculum requirements for state schools thus allowing independent schools greater scope for individual approaches.

Within state schools, distinctiveness is often related to the provision of religious education. The School Standards and Framework Act 1998 carries on the requirement provided for in 1944 that there should be an 'agreed syllabus' for each area for the provision of religious education. This agreed syllabus is drawn up by a local conference of representatives and the LEA is advised by the local standing advisory council on religious education (SACRE). Under the Education Act 1996, this agreed syllabus must 'reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking

account of the teaching and practices of the other principal religions represented in Great Britain.’ The School Standards and Framework Act 1998 requires that the religious education provided under an agreed syllabus must not be linked to the catechism of any particular denomination.

The status of the schools – as community, foundation, voluntary controlled or voluntary aided – is relevant in terms of how much discretion the school has in relation to its religious education syllabus. Community schools, and foundation and voluntary schools without a religious character, must provide religious education in accordance with the agreed syllabus. Foundation and voluntary controlled schools with a religious character must also follow such agreed syllabus except where the parents of any pupils request that they receive religious education in accordance with the provisions of the school’s trust deed or the tenets of the school’s religious denomination. In voluntary aided schools with a religious character, religious education is to be provided in accordance with any trust deed relating to the school or in accordance with tenets of the religious denomination specified in relation to the school unless the parents request that their child follows the agreed syllabus.

The law provides that the parent of a pupil in any state school may withdraw their child from religious education. The absence of a requirement to consider the views of the child on this matter runs counter to the requirements of Article 12 of the UN Convention on the Rights of the Child and it may be that, in time, the Assembly, given its commitment to that Convention, will address this issue. All maintained schools are required to hold a daily act of collective worship in which all pupils take part. Parents are entitled to withdraw a pupil, other than a sixth-form pupil, from the act of collective worship and sixth-form pupils are allowed to withdraw themselves. For community and foundation schools without a religious character, the act of worship is to be ‘wholly or mainly of a broadly Christian character’ in reflecting the ‘broad traditions of Christian belief without being distinctive of any particular Christian denomination.’ An exception may be made where the local SACRE determines that it is not appropriate for the requirement of a broadly Christian act of worship to apply to a particular school. This would be appropriate if the school had many non-Christian pupils. For voluntary schools and foundation schools with a religious character, the required collective worship must be in accordance with the trust deed or in accordance with the practices of the religion or religious denomination of the school.

Diverse religious and cultural backgrounds may also lead to differing views on the provision of sex education in schools. Under the Education Act 1996, governing bodies of all maintained schools are obliged to have an up to date policy, which is available to parents, on the school’s provision of sex education. All maintained secondary schools are required by the Education Act 2002 to provide sex education for all pupils as part of the ‘basic curriculum’. Maintained primary schools are not obliged to provide sex education but may do so at the discretion of the school. In all cases, the law requires that parents are allowed to withdraw their child from sex education. Again, this is a right of the parents and does not require consideration of the views of the child.

An area of tension between respecting diversity and encouraging a school identity has been in relation to school uniform. Education legislation does not set down school uniform or appearance requirements but it is a matter for the governing body of a school as to whether it lays down such requirements as part of the exercise of its responsibility for the conduct of the school. Non-statutory guidance from the Assembly encourages the adoption of school uniforms after consultation with parents, pupils and relevant local or faith communities. A school uniform is seen as having the potential to provide a sense of identity and cohesion within the school and to support good behavior and discipline and to remove peer pressure to dress in particular fashions. However, the guidance cautions awareness of the implications of a school uniform policy for different religious and racial groups and the need to avoid discrimination on grounds of sex, race, religion or belief or disability. This is essential as the consequence for a pupil of failing to comply with a uniform or appearance policy could be a disciplinary sanction including suspension from school. The challenge for governing bodies is achieving a balance between the need to accommodate certain exceptions to the school uniform in order to respect religious, racial and cultural difference while not undermining the whole rationale behind having 'uniform' dress and appearance requirements. Achieving the appropriate balance in practice has presented problems for governing bodies as case law in Wales and the rest of the United Kingdom has shown (e.g. *Watkins-Singh, Begum*).

Decisions about admitting pupils

The School Standards and Framework Act 1998 requires that parents be given an opportunity to express a preference regarding their child's school and that, unless one of the statutory exceptions applies, that preference is to be complied with. Grounds for not complying with a parental preference are that the child has already been permanently excluded from two or more schools in the past two years, that granting the preference would not be compatible with the efficient use of resources or the provision of efficient education (as would be the case where a school is oversubscribed) or where entry to a school's sixth form is based on selection on ability or aptitude and the preference would not be consistent with these arrangements. Admissions authorities are required to act in accordance with the Admissions Code issued by the Welsh Government. The admissions authority for a community school or a voluntary controlled school is the LEA unless the LEA has delegated this responsibility to the governing body. In relation to a voluntary aided or foundation school the governing body is the admissions authority.

Every maintained school, including those with a religious character, which has enough places must offer a place to a child who has applied for a place. The setting of the admissions numbers for each relevant age group is clearly, therefore, a crucial aspect of the admissions process as this provides the benchmark for deciding whether the school is oversubscribed with applications or not. In order to deal with those situations where a school is oversubscribed, each admissions authority must, in advance, indicate to parents the criteria, which must be fair, clear and unambiguous, which will be used to allocate places where it is oversubscribed.

The Admissions Code sets out examples of ‘oversubscription criteria’ which must not be adopted by admissions authorities. These include criteria which (except in relation to sixth forms) would select on the basis of ability or aptitude, those which would give priority to children whose parents are more able or willing to support the ethos of the school, take account of sibling behavior, whether good or bad, or allocate places to children with particular interests or specialist knowledge. It is expressly prohibited to exclude applicants from a particular social or religious group or to indicate that only applicants from such a social or religious group will be considered. Only where a school has been officially designated as having a religious character is it permissible to give priority to children based on religious faith.

In terms of what constitute fair criteria for dealing with oversubscription, the Code notes that vulnerable children who are in public care are to be given the highest priority. Admissions authorities with a designated religious character *may* give first priority to ‘looked after’ children (those in care or provided with accommodation by the local authority) whether or not of the faith but *must* give first priority to ‘looked after’ children of their faith above any other children of their faith. Other criteria which may be considered relate to the position of siblings of pupils currently at the school and situations where there is a medical need in the family. Distance from the school may be considered relevant but if it is to be a criterion it must be carefully and objectively explained how it is to be measured.

Schools with a religious character are permitted to give preference in their admission arrangements to members of a particular denomination or faith as long as this does not conflict with other legislation. However, they must not keep open places if they have insufficient applicants from the particular faith and other families have applied for places. The Code requires that the oversubscription criteria of faith schools must be objective, transparent and capable of being understood by applicant parents. If preference is to be given to members of a particular faith, then it is a requirement that the arrangements make clear how that affiliation is to be demonstrated – whether by statement of the parents, reference from church representative or other means.

Decisions about staff

In order to teach in Wales, an individual must have Qualified Teacher Status on the basis of recognized qualifications and must be registered with the General Teaching Council for Wales. The school’s governing body is responsible for the appointment and dismissal of staff and the extent to which it can stipulate requirements which reflect the ethos of the particular school depends on the status of the school. This is dealt with in the School Standards and Framework Act, as amended.

In a voluntary aided school with a religious character, preference may be given in relation to the appointment, remuneration or promotion of teachers at the school to those whose religious opinions accord with those of the school or who attend religious worship in accordance with those tenets or who are willing to give religious education

at the school in accordance with those tenets. Such a school may have regard to the conduct of a teacher which is incompatible with the school's religious precepts and tenets in relation to dismissing that teacher. A teacher appointed to give religious education in such a school may be dismissed if he or she fails to give such education 'efficiently and suitably.'

In voluntary controlled and foundation schools with a religious character, the 1998 Act requires the appointment of teachers who are selected for their 'fitness and competence' to give religious education in accordance with the school's religious tenets. Such teachers are referred to in the Act as 'reserved' teachers and they may comprise no more than one-fifth of the school's teaching staff. In addition to the 'reserved' teachers in a foundation or voluntary controlled school, it is permissible also to have regard when appointing a head teacher to the applicant's 'ability and fitness to preserve and develop the religious character of the school.'

Accountability for school quality

School inspection in Wales is conducted by Estyn, Her Majesty's Inspectorate for Education and Training in Wales. Estyn is independent of the National Assembly for Wales but is funded by it. It is responsible for inspecting quality and standards in education and training providers in Wales. This includes inspecting both maintained *and* independent schools and learning settings. It is also required to give advice to the Welsh Government on quality and standards in education and training in Wales and to promote the spread of good practice in education and training.

On the whole, the inspection regime, both immediately before devolution and since, has been regarded as less of a combative relationship between the schools, the teaching professions and the inspectorate than its English equivalent (Phillips and Harper-Jones, 2002).

Teaching of values

As already noted, the latitude a school has in relation to the content of religious education will vary depending on the type of school that is at issue and schools with a religious character have scope for developing the ethos of the school in line with its religious basis through its syllabus and in the appointment of teaching staff. In addition to the provision of religious education, all maintained schools must, as noted, follow the 'basic curriculum' and this includes the provision of personal and social education (PSE). In Wales, the themes pursued in the PSE framework are: active citizenship, health and emotional well-being, moral and spiritual development, preparing for lifelong learning and sustainable development and global citizenship. There is a strong emphasis on the development of

active citizens who are aware of their community identity and of their rights and responsibilities in society.

Conclusion

Wales has had legislative power only since 2000, and it is only since 2007 that the Assembly's powers have gone beyond subordinate legislation. Nonetheless, in this relatively short period, a definite divergence has occurred between England and Wales in terms of approaches to choice and diversity in the provision of education. With not much more than a decade of experience of devolved power, it very much remains to be seen how things will continue to develop. Acknowledgment: The work for this profile has benefited from a grant for a research project on Education, Human Rights and Devolution funded by the UK Arts and Humanities Research Council whose assistance is gratefully acknowledged.

References

Daugherty, R., Phillips, R. and Rees, G., (Eds) (2000). *Education Policy-making in Wales: explorations in devolved governance*. Cardiff, Wales: University of Wales Press.

Harris, N., (2007). *Education, Law and Diversity*. Oxford and Portland, Oregon: Hart Publishing.

Jones, G.E., (1997). *The Education of a Nation*. Cardiff, Wales: University of Wales Press.

Phillips, R., (2003). Education policy, comprehensive schooling and devolution in the disunited Kingdom: an historical 'home international' analysis. *Journal of Education Policy*, 18: 1, 1 – 17. doi: 10.1080/0268093032000042173

Phillips, R. and Harper-Jones, G., (2002). From Ruskin to the Learning Country: Education policy, the State and educational politics in England and/ or Wales, 1976-2001. *Educational Review*, 54, 297-305. doi: 10.1080/0013191022000016347

Phillips, R. and Sanders, S., (2000). Contemporary Education Policy in Wales: Theory, Discourse and Research. In R Daugherty, R Phillips and G Rees (Eds) *Education Policy-making in Wales: explorations in devolved governance*. Cardiff, Wales: University of Wales Press.

Welsh Assembly Government (2001). *The Learning Country: a Paving Document*.

Welsh Assembly Government (2009) *Learner Travel Operational Guidance*.

Welsh Assembly Government (2010). *Welsh-medium Education Strategy*, Information document No: 083/2010.

Cases

Belgian Linguistic Case No 2 (1968) 1 EHRR 241

R (on the application of Begum) v Head Teacher and Governors of Denbigh High School [2007] 1 AC 100

Watkins-Singh v Governing Body of Aberdare Girls' High School [2008] EWHC 1865

Legislation and other official materials

UK Acts of Parliament may be found on: www.opsi.gov.uk

Welsh legislation and other Assembly records may be found at: <http://www.assemblywales.org/>

Welsh Assembly Government / Welsh Government documents and statistics may be found at: www.wales.gov.uk